

Remarks

Applicants respectfully request reconsideration of the present application in view of the above amendments and following remarks. Claims 1-10 have been cancelled and claims 14-29 have been added. No claims have been amended. Therefore, claims 11-29 are pending in the present application.

Applicants hereby submit formal drawings that replace the drawings that were originally submitted with the present patent application. Each of the formal drawings sheets are labeled as a replacement sheet. Applicants request that the formal drawings be accepted.

The Office Action states that claims 1-10 (Group I) are distinct from claims 11-13 (Group II). Applicants hereby elect to prosecute claims 11-13 (Group II). As such, claims 1-10 have been cancelled from the present application without prejudice or disclaimer. Applicants reserve the right to file a continuation or divisional application directed to the subject matter of withdrawn claims 1-10 prior to the issuance of a patent on those claims elected for further prosecution at this time.

Claims 11-13 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-15 of copending Application No. 10/388,129. Applicants submit herewith a terminal disclaimer and request that the provisional double patenting rejection be withdrawn.

Claims 11-13 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2003/0235723 to Simpkins et al. ("the Simpkins reference"). Applicants respectfully traverse this rejection.

Independent claim 11 is directed to a fuel cell assembly including at least one fuel cell stack and a supporting structure surrounding the fuel cell stack. A gas spring is disposed within the assembly between the stack and the supporting structure. The spring includes a first membrane, a second membrane, and means for sealing edges of the first and second membranes to define a closed chamber therebetween for capture of gas. The fuel cell assembly also includes first valve means for admitting gas to the chamber, and second valve means for exhausting gas from said chamber.

The Simpkins reference does not teach or suggest a fuel cell assembly including first valve means for admitting gas to the chamber, and second valve means for exhausting gas from said chamber as recited in claim 11. In rejecting claim 11, the Examiner stated that, in the Simpkins reference, apertures (61) formed in the edge regions of the gas spring (144) allow gas (60) to be admitted and exhausted from the chamber (58) defined by the membranes (52, 54). See *Office Action*, pg. 4; *Simpkins*, ¶ 0039. Applicants respectfully disagree with the Examiner's interpretation of the Simpkins reference. In contrast, as best seen in FIG. 5 of the Simpkins reference, the apertures (61) are aligned with similarly shaped apertures in supply and exhaust manifold (40), base plate (18), and the fuel cell stack (12), and passageways (39) *for carrying oxygen and hydrogen to the fuel cell modules (14)*, not for admitting and exhausting gas from the chamber (58). See

Simpkins, ¶ 0039 (emphasis added). The chamber (58) is sealed around apertures (61) and does not allow the gas (60) to be both admitted and exhausted from the chamber (58) through the apertures (61). Furthermore, the *Simpkins* reference does not disclose the use of first and second valve means for admitting and exhausting gas from the chamber (58).

For at least the reasons set forth above, Applicants request that the rejection of claim 11 be withdrawn. As claim 12 depends from claim 11, Applicants request that the rejection of claim 12 be withdrawn for at least the same reasons that was set forth with respect to claim 11.

Independent claim 13 is directed to a fuel cell assembly comprising at least one fuel cell stack and a supporting structure surrounding the fuel cell stack. Gas spring means is disposed within the assembly between the stack and the supporting structure. The gas spring means defines a closed chamber and includes an inlet valve for admitting gas into the chamber and an outlet valve for exhausting gas from the chamber.

For at least the same reasons set forth with respect to claim 11, the *Simpkins* reference does not teach or suggest a fuel cell assembly including an inlet valve for admitting gas into the chamber and an outlet valve for exhausting gas from the chamber as recited in claim 13. Applicants request that the rejection of claim 13 be withdrawn.

New claims 14-20 depend either directly or indirectly from claim 11 and further define the invention set forth in claim 11. As such, claims 14-20 are not

taught or suggested by the Simpkins reference for at least the same reasons set forth with respect to claim 11.

New independent claim 21 is directed to a fuel cell assembly including at least one fuel cell stack and a supporting structure surrounding the fuel cell stack. A gas spring is disposed within the assembly between the stack and the supporting structure. The spring includes a membrane defining a gas chamber. A first valve is positioned in the membrane for admitting gas to the chamber, and a second valve is positioned in the membrane for exhausting gas from the chamber. New claims 22-29 depend either directly or indirectly from claim 21 and further define the invention set forth in claim 21. Applicants submit the Simpkins reference does not teach or suggest all of the limitations included in claims 21-29.

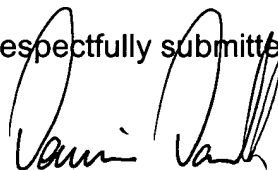
Conclusion

In light of the foregoing, Applicants submit that claims 11-29 are in condition for allowance and such allowance is respectfully requested. Should the Examiner feel that any unresolved issues remain in this case, the undersigned may be contacted at the telephone number listed below to arrange for an issue resolving conference.

The Commissioner is hereby authorized to charge the \$130.00 fee for the terminal disclaimer and any other fee that may have been overlooked to Deposit Account No. 10-0223.

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Respectfully submitted,



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PATENT

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